

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. Based on the change in income, PATH recalculated the family's eligibility for Food Stamps. The \$1,830 in income

was subjected to a \$147 standard unearned income exemption for a net amount of \$1,683. The only other deduction the family received was an excess shelter allowance of \$124.50. That amount was based on the fact that the family, at that time, paid \$600 a month for rent. To that amount PATH added the maximum fuel and utility allowance of \$366 for a total shelter cost of \$966. Since their shelter costs exceeded fifty percent of their net amount, the excess over 50 percent was determined to be \$124.50. The petitioner's family received no further deductions.

3. PATH notified the petitioner by written notice dated October 17, 2002, that her family's Food Stamps would decrease from \$395 to \$85 per month based on the income increase. The income increase also resulted in a reduction of the shelter allowance they had been previously receiving since they now had more income to pay their shelter.

4. The petitioner appealed this decision on November 8 and claimed in her letter of appeal that she should have received a deduction for excess medical expenses related to over the counter medications not covered by Medicare and Medicaid which the family receives. On November 18, 2002, the petitioner's worker wrote to her saying that "in order to use the cost of these medications as a deduction in your Food

Stamp budget, I will need the following: a statement from both your physician and your husband's recommending that you take them, and monthly receipts for said items."

5. As of the date of the hearing on January 6, 2003, the petitioner had not provided these verifications to PATH stating that she had no intention of having her doctor verify the family's need for analgesics and cough medicine. She also protests that her children's Social Security income (totaling \$668 per month) should not have been included in family income and that some allowance should be made for their monthly truck payment of \$345 which is the family's only vehicle.

ORDER

The decision of PATH is affirmed.

REASONS

PATH's Food Stamp regulations require the inclusion of all earned and unearned income (including Social Security benefits) of a household when considering eligibility with certain enumerated exceptions. F.S.M. § 273.9(b)(2). One of the exceptions is the earned income of children under the age of eighteen who are at least half-time students. F.S.M. § 273.9(c)(2). There is no similar exclusion for the unearned Social Security income of children under the regulations. It

must be concluded that PATH correctly included the Social Security unearned income of the petitioner's children as countable income.

The regulations make provisions for several kinds of deductions from income when considering Food Stamp eligibility. F.S.M. § 273.9(d). The petitioners received the most common deductions, the "standard deduction" of \$147 per month from unearned income for a five member household and an "excess shelter" deduction. The latter allows the deduction of the "monthly shelter costs in excess of fifty percent of the household's income after all other deductions . . . have been allowed." F.S.M. 273.9d(5). PATH gave the petitioner the maximum allowable shelter costs in their situation (see P-2590A(5)) and correctly calculated the amount in excess of their income. There is no deduction available for the expense of purchasing vehicles.

The petitioners claim that they should also have received an "excess medical costs" deduction.<sup>1</sup> The regulations provide that such a deduction can be obtained as follows:

Excess Medical Deduction

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<sup>1</sup> Other deductions are available for dependent care costs, child support payments and business expenses. F.S.M. § 273.9(d). The petitioner does not allege facts which would make her eligible for any of these deductions.

That portion of medical expense in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in 271.2. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

. . .

iii Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional.

. . .

F.S.M. 273.9d(3)

Application Processing

Mandatory Verification

iv. Medical Expenses

The amount of any medical expenses (including the amount of reimbursements) deductible under 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

F.S.M. 273.2f(1)

Determining Deductions

Anticipating Expenses

The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. . . The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage ,and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. . .

F.S.M. § 273.10(d)(4)

The above regulations make it clear that the petitioner and her husband as disabled persons are both eligible for this deduction if they have medical expenses in excess of \$35 per month. However, in order to get this deduction, the regulation requires, at least upon the initial claim, that the petitioner verify the monthly amount of the expense and, if PATH requests it, to show that these medications are approved by a doctor. Thereafter, the petitioner does not have to re-verify the expense during the certification period. At the end of the certification period (in this case six months), the regulations mandate a re-verification of the amount of the

medical expense. However, PATH clearly has the discretion based on its experience with the petitioner to forego further medical approval verifications unless the need is questionable. For example, if the petitioner's or her husband's doctors initially verify that they have a chronic unchanging condition which requires them to use certain amounts and kinds of over-the-counter medications, it should not be necessary to require reconfirmation of approval every six months unless some question should arise.

In this case, the petitioner has made an initial claim for a medical deduction. As such, PATH is absolutely required to obtain verification of the amount of the monthly expense under its regulations both initially and again upon re-certification. It may request verification of physician approval under its regulation if it is questionable. Although little evidence was offered on this issue at hearing, it does not seem unreasonable for PATH to ask, at least at the first request, for verification of physician approval from the physician. Whether such verification might be required again in six months would depend on whether PATH actually questions whether the physician continued to approve the medications.

As the petitioner has refused to verify both the amounts of and physician approval of the medications on this initial

request, PATH is justified in refusing to give the petitioner the deduction unless and until she cooperates. Therefore, it must be found that the petitioner has received all of the deductions to which she is currently entitled and \$1,558 is the correct amount of the Food Stamp income. Under the Food Stamp regulations, a family of five with \$1,558 in income is eligible for \$85 in Food Stamps per month. P-2590 D15. As PATH's decision is correct, the Board must uphold the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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